

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**Government of the District of Columbia
Public Employee Relations Board**

In the Matter of:)

Metropolitan Police Department,)

Petitioner,)

and)

Fraternal Order of Police/Metropolitan Police)
Department Labor Committee,)

Respondent.)
_____)

PERB Case No. 04-A-13

Opinion No. 794

MOTION FOR RECONSIDERATION

DECISION AND ORDER

The Metropolitan Police Department ("MPD") filed a Motion for Reconsideration ("Motion"). MPD is requesting that the Public Employee Relations Board ("Board") reverse Slip Op. No. 784. Specifically, MPD asserts that "reconsideration should be granted to determine whether the arbitrator exceeded his jurisdiction. [In addition, MPD argues that] [u]pon reconsideration, the arbitral award should be reversed and the grievance dismissed because the Arbitrator exceeded his jurisdiction in finding, without a lawful basis, that the grievance was timely filed." (Motion at p. 7).

Board Rule 559.1, 559.2 and 559.4 provide as follows:

559.1 - Board Decision

The Board's Decision and Order shall become final thirty (30) days after issuance unless the order specifies otherwise.

559.2 - Board Decision (cont.)

The Board's Decision and Order shall not become final if any party files a motion for reconsideration within ten (10) days after issuance of the

decision, or if the Board reopens the case on its own motion within ten (10) days after issuance of the decision, unless the order specifies otherwise.

559.4 - Board Decision (cont.)

Administrative remedies are considered exhausted when a Decision and Order becomes final in accordance with this section.

Slip Op. No. 784 was issued on March 31, 2005. In that opinion, the Board concluded that no statutory basis existed for setting aside the award. As a result, the Board denied MPD's arbitration review request. Paragraph two of the Board's Order provides that "[p]ursuant to Board Rule 559.1, this Decision and Order is final upon issuance."

In the present case, MPD filed its Motion on May 12, 2005.¹ This filing was forty two (42) days after the Board issued its March 31st Decision and Order. Therefore, we conclude that pursuant to Board Rule 559.1 and 559.2, MPD's Motion is not timely. Specifically, Slip Op. No. 784 became final on April 14th because MPD failed to file a motion for reconsideration within ten days after issuance of the decision. In addition, administrative remedies are considered exhausted when a Decision and Order becomes final pursuant to Board Rule 559. 4.

MPD acknowledges that its Motion is not timely. However, MPD asserts that the issue involved concerns a question of "subject matter jurisdiction, a question that may be raised at any time." (Motion at p. 3, n. 1) MPD did not previously raise this argument and does not cite any legal authority to support its position.

Moreover, since MPD has filed a Petition for Review regarding PERB Slip Opinion No. 784, this matter is now pending before the Superior Court of the District of Columbia. By filing its Motion for Reconsideration here after it filed its Petition for Review in the Superior Court, MPD assumes that this Board has concurrent jurisdiction with that of the Superior Court. To the contrary, the case law is clear that this Board does not have concurrent jurisdiction with the Superior Court. See, Hawkins v. Hall, 537 A.2d 571, 574 (D.C. 1988).

In light of the above, we find that MPD's argument lacks merit. As a result, we deny MPD's Motion for Reconsideration.

¹We note that on April 28, 2005, MPD appealed Slip Op. No. 784 by filing a Petition for Review with the Superior Court of the District of Columbia.

ORDER

IT IS HEREBY ORDERED THAT:

- (1) The Metropolitan Police Department's Motion for Reconsideration is denied.
- (2) Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D. C.

July 8, 2005

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 04-A-13 was transmitted via Fax and U.S. Mail to the following parties on this the 8th day of July 2005.

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